

U.S. Serial No. 08/07/2003

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DEC 04 2006

Status of the Claims following the Office action mailed 08/08/2006

Claims 17-32 are pending.

Claims 17-32 are rejected.

Amendments to the Specification

Applicants have amended the cross-reference to related applications in order to correct informalities.

Applicants have amended the brief description of the drawings to individually describe each of the individual drawings 2A-J, 3A-I, 4A-K, and 6A-C, and to remove references to colors. Applicants note that color drawings were provided in the parent application only. In addition, Applicants have amended the descriptions of Figs. 2A-J, 3A-I, and 4 to refer to the example in which these figures are described.

Applicants have amended example 3 to remove references to colors, in accordance with the amendments to the brief description of the drawings.

The amendments to the specification do not introduce new matter. Applicants request entry of the amendments to the specification into the record.

Amendments to the Claims

Applicants have amended claim 1 to clarify the relationship between the claim elements and to specify how the method steps provide a measure of dendritic cell function.

Applicants have amended claim 30 to specify that the dendritic cell subsetting antibody is an additional antibody added during step (b) of claim 1. Claim 30 is drawn to a preferred embodiment described at page 15, lines 14-19, of the specification.

The amendments to the claims do not introduce new matter. Applicants request entry of the amendments to the claims into the record.

U.S. Serial No. 08/07/2003

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Objection to the Specification

The brief description of the drawings were objected to for not each of the individual drawings 2A-J, 3A-I, 4A-K, and 6A-C. Applicants have amended the specification to individually describe each figure. Applicants request reconsideration and withdrawal of the objection to the specification view of the amendments and remarks.

Rejection of claims 17-32 under 35 U.S.C. §112

Claims 17-32 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Applicants traverse in view of the amendments to the claims, for the reasons set forth, below.

Firstly, claims 17-32 were rejected based on ambiguity in the language of the independent claim, claim 17. Applicants have amended claim 17 to clarify the relationship between the claim elements and to specify how the method steps provide a measure of dendritic cell function.

Secondly, claim 30 was rejected for lacking antecedent basis for "said dendritic cell subsetting antibody". Applicants have amended claim 30 to specify that the dendritic cell subsetting antibody is an additional antibody added during step (b) of claim 1.

Applicants believe that the amendments to the claims remove the bases for the rejection. Applicants request reconsideration and withdrawal of the rejection of claims 17-32 under 35 U.S.C. §112 in view of the amendments and remarks.

Double Patenting

I. Claims 17 and 18 were rejected on the ground of nonstatutory obviousness-type double patenting over claims 22 and 23 of U.S. Patent No. 6,649,333 ("the '333 patent"), to which the present application claims priority.

Applicants submit herewith a terminal disclaimer over the '333 patent. Applicants request withdrawal of the rejection of claims 17 and 18 over claims 22 and 23 of the '333 patent in view of the filing of the terminal disclaimer.

U.S. Serial No. 08/07/2003

II. Claims 17 and 19-32 were rejected on the ground of nonstatutory double patenting over claims 1 and 5-18 of the '333 patent. Applicants believe this rejection is improper in view of the restriction requirement issued 06/06/2006 in the present case. Therein, Examiner identified the following two inventions:

- Group I, claims 1-16, drawn to flow cytometric method of measuring dendritic cell function in whole blood by assaying for intracellular antigens that indicate dendritic cell function.
- Group II, claims 17 and 18, drawn to flow cytometric method of measuring dendritic cell function in whole blood by assaying for cell surface markers that indicate dendritic cell function.

Applicants elected the invention of Group II, claims 17 and 18, for continued prosecution, and subsequently added claims 19-32 drawn to this same group.

Applicants point out that claims corresponding to Group I were issued in the parent case, U.S. Serial No. 09/158,406, now issued as the '333 patent. In particular, claims 1 and 5-18 of the '333 patent are drawn to a method that involves the intracellular detection of a cytokine (see claim 1, step (d), of the '333 patent). Applicants submit that as Examiner has indicated that the inventions of Group I and Group II are patentably distinct, the rejection of claims 17 and 19-32, drawn to the invention of Group II, should not be rejected over claims 1 and 5-18 of the '333 patent, drawn to the invention of Group I.

Applicants further point out that the filing of the terminal disclaimer over the '333 patent (see above) renders this rejection moot.

Applicants request withdrawal of the rejection of claims 17 and 19-32 over claims 1 and 5-18 of the '333 patent both for the reasons set forth, above, and in view of the filing of the terminal disclaimer.

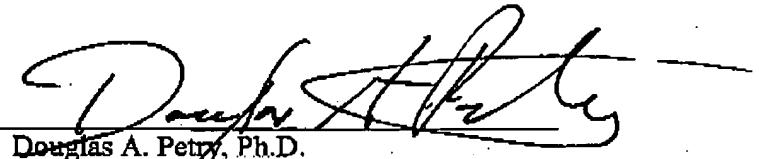
U.S. Serial No. 08/07/2003

Conclusion

Applicants believe that all rejections applied to the claims have been overcome and that the present application is now in condition for allowance.

Respectfully submitted,

12/4/06  
Date



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